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M.R., widow of T.R., Appellant)	
)	
and)	Docket No. 18-0480
)	Issued: March 22, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS & BORDER PROTECTION,)	
Carrizo Springs, TX, Employer)	
)	

Case Submitted on the Record

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 3, 2018 appellant filed a timely appeal from a December 11, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly suspended appellant's compensation benefits, effective January 7, 2018, for failure to complete a Form CA-12 as requested.

FACTUAL HISTORY

On September 12, 2014 appellant filed a claim for compensation by widow, widower, and/or children (Form CA-5) in connection with her husband's September 12, 2014 death. The deceased employee, a 34-year-old border patrol agent, was involved in a September 12, 2014 employment-related motor vehicle accident. Following the head-on collision with another motorist, the employee was airlifted to a nearby military hospital and later died of his injuries during surgery.⁴

By decision dated May 6, 2015, OWCP accepted appellant's claim. It paid appellant compensation, beginning September 13, 2014. OWCP placed her on the periodic compensation rolls, effective January 10, 2016.

On November 2, 2016 OWCP began to periodically request appellant to provide the information as requested in the enclosed claim for continuance of compensation under FECA (Form CA-12) in order for OWCP to decide whether her survivor benefits should continue, or be adjusted. It notified her that she had to fully answer all questions on the form and return the statement within 30 days, or her benefits would be suspended pursuant to 20 C.F.R. § 10.414. The letters were sent to a post office box in El Dorado, Texas.

In an April 3, 2017 CA-110 memorandum of telephone call, OWCP noted that appellant had called to inform OWCP that she planned to submit a change of address, and that she would be requesting a copy of her compensation history.

On June 6, 2017 an OWCP benefit statement mailed to appellant at the same post office Box in El Dorado, Texas was received as "return to sender." The U.S. Postal Service markings on the envelope indicated a forwarding address for appellant in San Angelo, Texas.

On July 3 and 27, and September 11 and 25, 2017, OWCP benefit statements mailed to appellant's post office box in El Dorado, Texas were each received as "return to sender." The U.S. Postal Service markings on the envelopes indicated a forwarding address for appellant in Leander, Texas.

By letter dated October 12, 2017, OWCP requested that appellant complete the enclosed Form CA-12 within 30 days, or her benefits would be suspended pursuant to 20 C.F.R. § 10.414.

⁴ The reported cause of death was "blunt force injuries complicating cardiomegaly (an enlarged heart)."

The letter was mailed to appellant's post office box in El Dorado, Texas. On November 6, 2017 the October 12, 2017 letter was received by OWCP as "return to sender."⁵

By decision dated December 11, 2017, OWCP suspended appellant's compensation benefits, effective January 7, 2018, due to her failure to complete the Form CA-12 which had been sent to her address in Leander, Texas. It noted that if she were to complete and return the enclosed copy of the Form CA-12, her compensation benefits would be restored retroactively to the date they were suspended.

LEGAL PRECEDENT

If a beneficiary is receiving compensation benefits due to an employee's death, OWCP will ask him or her to complete a report once each year using a Form CA-12.⁶ The report requires the beneficiary to note changes in marital status and dependents. If the beneficiary fails to submit the form (or written equivalent) within 30 days of the date of request, OWCP shall suspend compensation until the requested form or equivalent written statement is received. The suspension will include compensation payable for or on behalf of another person (for example, compensation payable to a widow on behalf of a child). When the form or statement is received, compensation will be reinstated at the appropriate rate retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

ANALYSIS

On October 12, 2017 OWCP issued a letter to appellant requesting that she complete the enclosed Form CA-12 within 30 days. It advised her that, if she did not complete the requested information within the time allotted, her benefits would be suspended pursuant to 20 C.F.R. § 10.414. OWCP addressed the letter to a post office box in El Dorado, Texas, and it was returned to sender as undeliverable to OWCP on or about November 6, 2017. In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of business was received in due course by the intended recipient.⁷ This presumption is commonly referred to as the "mailbox rule."⁸ It arises when the record reflects that the notice was properly addressed and duly mailed.⁹ The presumption is rebutted where there is evidence of nondelivery or other evidence that supports that the addressee did not receive the correspondence.¹⁰

⁵ On October 19 and November 17, 2017 additional OWCP benefit statements mailed to appellant's post office box in El Dorado, Texas were received by OWCP as "return to sender." The U.S. Postal Service markings on the envelopes indicated a forwarding address for appellant in Leander, Texas.

⁶ 20 C.F.R. § 10.414.

⁷ *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

⁸ *Id.*

⁹ *Id.*

¹⁰ *J.B.*, Docket No. 17-1164 (issued September 11, 2017).

In this case, OWCP sent a series of correspondences including the October 12, 2017 letter and enclosed Form CA-12 to her post office box in El Dorado, Texas. All of those documents were subsequently “returned to sender” (OWCP) indicating a forwarding address in Leander, Texas. As appellant did not receive a copy of the October 12, 2017 letter and Form CA-12, she was unaware that she needed to complete and return the form to OWCP within 30 days. Accordingly, the Board will reverse the December 11, 2017 suspension decision. OWCP shall reinstate appellant’s compensation retroactive to January 7, 2018.

CONCLUSION

The Board finds that OWCP improperly suspended appellant’s compensation, effective January 7, 2018.

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2017 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: March 22, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees’ Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees’ Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees’ Compensation Appeals Board